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DEPARTMENT OF JUSTICE
Antitrust Division

United States v. Verso Paper Corp. and NewPage Holdings Inc.

Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in United States of America v. Verso Paper Corp. and NewPage Holdings Inc., Civil No. 1:14-cv-2216. On December 31, 2014, the United States filed a Complaint alleging that Verso's proposed acquisition of NewPage would violate Section 7 of the Clayton Act, 15 U.S.C. §18. The proposed Final Judgment, filed the same time as the Complaint, requires Verso to divest NewPage's coated paper mills in Biron, Wisconsin, and Rumford, Maine, including tangible and intangible assets necessary to operate the facilities.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW, Suite 1010, Washington, DC 20530 (telephone: 202-514-2481), on the Department of Justice's website at <http://www.usdoj.gov/atr>, and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Department of

Justice, Antitrust Division's internet website, filed with the Court and, under certain circumstances, published in the Federal Register. Comments should be directed to Peter J. Mucchetti, Chief, Litigation I Section, Antitrust Division, Department of Justice, 450 Fifth Street, NW, Suite 4100, Washington, DC 20530 (telephone: 202-307-0001).

Patricia A. Brink
Director of Civil Enforcement

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA
Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 4100
Washington, DC 20530

Plaintiff,

v.

VERSO PAPER CORP.
6775 Lenox Center Court
Memphis, TN 38115

and

NEWPAGE HOLDINGS INC.
8540 Gander Creek Drive
Miamisburg, OH 45342

Defendants.

CASE NO. 1:14-cv-2216
JUDGE: Tanya S. Chutkan
FILED: 12/31/14

COMPLAINT

The United States of America brings this antitrust action to enjoin Verso Paper Corp. from acquiring NewPage Holdings Inc. The proposed acquisition would likely substantially lessen competition in the manufacture and sale of coated freesheet web paper, coated groundwood paper, and label paper to customers in North America. By acquiring NewPage, Verso would eliminate its foremost competitor in the sale of these products.

I. INTRODUCTION

1. Both Verso and NewPage produce two types of coated publication papers – coated freesheet web paper and coated groundwood paper. Post-acquisition, the combined company would control approximately 50 percent of the coated freesheet web market in North America,

which accounts for more than \$2 billion in sales, and 40 percent of the coated groundwood market, which accounts for more than \$3 billion in sales. Vigorous competition between Verso and NewPage has ensured a reliable supply of high-quality coated publication papers to North American purchasers at competitive prices. Verso's proposed acquisition of NewPage would eliminate this intense competition, and would likely increase the incentives of the merged firm – and the remaining firms in the market – to increase prices and reduce output.

2. Verso and NewPage are the largest producers in North America of two types of label paper: cut-and-stack label paper and face sheet for pressure-sensitive labels. Post-acquisition, the combined company would control approximately 70 percent of the North American label-paper market, which accounts for approximately \$350 million in sales. Verso has been a fierce competitor to NewPage, the leading seller of label paper. Customers have taken advantage of this competition by playing Verso and NewPage off each other to obtain more favorable prices. Verso's acquisition of NewPage would extinguish this competition.

II. JURISDICTION, VENUE, AND INTERSTATE COMMERCE

3. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, to prevent Verso and NewPage from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

4. This Court has subject-matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. § 25.

5. Verso and NewPage are engaged in, and their activities substantially affect, interstate commerce. Collectively, the parties' 2013 coated freesheet web, coated groundwood, and label paper revenues in the United States were approximately \$2.5 billion.

6. Venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22. Both Verso and New Page are corporations that sell publication papers to customers located in this District. Verso and NewPage have consented to personal jurisdiction and venue in this Court.

III. THE DEFENDANTS AND THE PROPOSED ACQUISITION

7. Defendant Verso is a corporation headquartered in Memphis, Tennessee. It operates two mills that collectively produce coated freesheet web paper, coated groundwood paper, label paper, and other types of paper. Verso's mills are located in Maine and Michigan. In early December 2014, Verso closed its mill in Bucksport, Maine, which produced coated groundwood paper.

8. Defendant NewPage is a corporation headquartered in Miamisburg, Ohio. NewPage operates eight mills that collectively produce coated freesheet web paper, coated groundwood paper, label paper, and other types of paper. These mills are located in Kentucky, Maryland, Michigan, Minnesota, Wisconsin, and Maine.

9. On January 3, 2014, Verso agreed to acquire NewPage in a transaction valued at approximately \$1.4 billion.

IV. THE COATED PAPER INDUSTRY

10. Coated freesheet web paper and coated groundwood paper are coated on both sides with a clay or other coating. The coating gives the paper a smooth surface and glossy appearance and allows for printing of high-quality graphics.

11. Coated freesheet web paper is bright, heavier-weight glossy paper with excellent print qualities that is used primarily for annual reports, magazine covers and premium magazines, upscale brochures, and direct mail advertising. Coated freesheet web paper is

produced for use in web printing applications. Web printing is typically used for large, high-speed printing jobs and requires paper rolls that are capable of being fed through the web printing equipment.

12. Coated groundwood paper is typically used for the interior pages of magazines and catalogues, the covers of low-cost magazines, and other medium-quality printing applications. Together, coated freesheet web paper and coated groundwood paper are referred to in this complaint as “coated publication papers.”

13. Competition in the coated publication paper markets is driven by several factors, including head-to-head bidding between manufacturers to serve the particular needs of specific customers, and by capacity and demand conditions. Producers individually negotiate most sales with customers. Customers have varying preferences for coated publication papers due to the papers’ varying characteristics, such as brightness, weight, printability, and smoothness. Customers often have specific requirements for the paper that they purchase, and customers typically evaluate each manufacturer’s products and qualify their products before purchasing from that manufacturer. Producers try to manufacture products that meet the needs of printers and end users.

14. Demand for most coated publication papers in North America has declined over the last several years because of a significant decline in demand for magazines, catalogues, and other publications. As a result, North American producers of coated publication papers have closed a number of mills and decommissioning of machines. Declining demand for coated publication papers is projected to continue, as is the closing of mills and decommissioned machines.

15. Label paper is typically used to make labels for certain consumer goods, such as

canned foods or wine bottles. Label paper is made from a type of freesheet paper that is coated on one side for printing, allowing the uncoated side to adhere to the product.

V. MARKET DEFINITION

A. Relevant Product Markets

1. Coated Freesheet Web Paper

16. In the event of a small but significant and non-transitory price increase, purchasers of coated freesheet web paper are unlikely to substitute to other types of paper in sufficient quantities to make the price increase unprofitable because coated freesheet web paper has characteristics that distinguish it from other types of paper. Some of these characteristics affect the appearance and performance of the product, whereas other characteristics affect the printing process for which the paper may be used.

17. Coated freesheet web paper is therefore a relevant product market and line of commerce under Section 7 of the Clayton Act.

2. Coated Groundwood Paper

18. In the event of a small but significant and non-transitory price increase, purchasers of coated groundwood paper are unlikely to substitute to other types of paper in sufficient quantities to make the price increase unprofitable because other papers are typically more expensive, have a different look and feel, or otherwise have characteristics that are undesirable for coated groundwood applications.

19. Coated groundwood paper is therefore a relevant product market and line of commerce under Section 7 of the Clayton Act.

3. Label Paper

20. In the event of a small but significant and non-transitory price increase, purchasers of label paper are unlikely to substitute to other kinds of paper in sufficient quantities to make the price increase unprofitable because label paper produces a high-quality appearance, is coated on only one side, and has other desirable characteristics. Purchasers of label paper are also unlikely to substitute to other label options in sufficient quantities to make the price increase unprofitable because changing the type of label could require a change in the product's container or packaging.

21. Label paper is therefore a relevant product market and line of commerce under Section 7 of the Clayton Act.

B. Relevant Geographic Market

22. The relevant geographic market for analyzing the likely effects of the proposed acquisition on the sale of each relevant product is no larger than the United States and Canada (referred to here as "North America," consistent with usage in the paper industry).

23. Defining a geographic market based on the location of customers is appropriate where, as here, (1) producers charge different prices based on customer location, and (2) arbitrage by customers is difficult.

24. For each relevant product, producers typically negotiate individual prices with each customer. Arbitrage is impractical because a customer in North America would need to find the product with the particular characteristics it requires from a customer outside of North America who has purchased that product at a significantly lower price to allow for shipping costs to North America. Furthermore, the additional costs of re-handling and re-shipping the product make arbitrage prohibitively expensive. Finally, a customer purchasing through arbitrage loses

valuable services that producers often provide, such as inventory management, warranties, and technical support.

25. In the event of a small but significant and non-transitory price increase, purchasers of each relevant product in North America are unlikely to defeat the price increase. North America is therefore a relevant geographic market for each relevant product under Section 7 of the Clayton Act.

VI. THE PROPOSED ACQUISITION WOULD LIKELY LEAD TO ANTICOMPETITIVE EFFECTS IN COATED PUBLICATION PAPERS

26. The proposed acquisition would likely significantly increase market concentration, eliminate head-to-head competition between Verso and NewPage, increase incentives to raise prices and reduce output, and facilitate accommodating conduct by competitors in the sale of coated publication papers.

27. The proposed acquisition would significantly increase market concentration for coated publication papers. Market concentration is a useful indicator of the level of competitive vigor in a market and the likely competitive effects of a proposed acquisition. The more concentrated a market, and the more a transaction would increase market concentration, the more likely it is that the transaction would substantially reduce competition. Concentration in relevant markets is typically measured by the Herfindahl-Hirschman Index (HHI). Markets in which the post-merger HHI is above 2,500 are considered highly concentrated. Mergers that increase the HHI by more than 200 points and result in a highly concentrated market are presumed likely to create or enhance market power. Markets in which the post-merger HHI is between 1,500 and 2,500 are considered moderately concentrated. Mergers that increase the HHI by more than 100

points and result in a moderately concentrated market potentially raise significant competitive concerns.

28. NewPage and Verso are the first and third largest competitors in the North American coated freesheet web paper market. New Page accounts for approximately 30 percent of market sales, and Verso accounts for approximately 20 percent. Post-merger, the merged firm would have an approximately 50 percent share, and with the next largest supplier, would account for approximately 80 percent of market sales.

29. The proposed acquisition would result in a highly concentrated market for coated freesheet web paper, with a post-merger HHI of approximately 3,500. The proposed acquisition would increase the HHI by approximately 1,200, and thus significantly increase market concentration.

30. NewPage and Verso are the first and second largest competitors in the North American coated groundwood market. NewPage and Verso each account for approximately 20 percent of market sales. Post-merger, the combined firm would have an approximately 40 percent share.

31. The proposed acquisition would result in a moderately concentrated market with a post-merger HHI of approximately 2,200. The acquisition would increase the HHI by approximately 800, and thus significantly increase market concentration.

32. Verso and NewPage have frequently competed for sales to coated publication paper customers. The proposed acquisition would eliminate this head-to-head competition.

33. The proposed acquisition would also increase Verso's incentive and ability to raise price and reduce output of coated publication papers. Consequently, the acquisition would likely lead to increased downtime, accelerated mill closures, and reduced output in North

America.

34. The acquisition would likely facilitate accommodating conduct by competitors, leading to increased prices and reduced output. Despite the differentiated nature of coated publication paper markets, these markets are conducive to accommodating conduct by competitors. A small number of producers dominate the industry, and producers regularly obtain information from customers about their options and competitors' prices and product availability.

VII. THE PROPOSED ACQUISITION WOULD LIKELY LEAD TO ANTICOMPETITIVE EFFECTS IN THE LABEL-PAPER MARKET

35. The proposed acquisition likely would substantially lessen competition in the sale of label paper. The acquisition would substantially increase market concentration and eliminate the head-to-head competition between Verso and NewPage.

36. NewPage accounts for approximately 60 percent of the market and Verso accounts for approximately 10 percent. Post-acquisition, the combined firm would have approximately a 70 percent share. The proposed acquisition is presumptively anticompetitive because it would substantially increase market concentration in the already highly concentrated label-paper market from approximately 3,800 to 5,300.

37. Customers have played Verso and NewPage off each other in negotiations to obtain lower prices and better products and service. If the acquisition were completed, customers would no longer be able to do so, likely enabling the combined firm to raise prices and eliminating beneficial non-price competition between Verso and NewPage.

VIII. ABSENCE OF COUNTERVAILING FACTORS

38. Entry by new competitors or expansion by existing competitors is unlikely to be timely or sufficient in scope to prevent the proposed acquisition's likely anticompetitive effects. Entry into publication papers is unlikely due to the declining demand for coated publication

papers and the high cost of building a new coated paper mill. Entry into label papers is costly, uncertain, and time-consuming, as successful entrants need to test and qualify each new product with each major customer.

39. Supply responses from overseas manufacturers are unlikely to prevent a substantial lessening of competition. Prices are generally higher for imports than for domestic products. Furthermore, foreign producers are limited by commitments to more profitable local markets; by significant transportation costs and logistical issues; by customers' exacting product specifications and preferences for short lead times; and by fluctuations in currency exchange rates, which disrupt consumer preferences for stable supply relationships.

40. The acquisition is unlikely to produce sufficient merger-specific, cognizable efficiencies that Verso would pass through to consumers to reverse the acquisition's likely anticompetitive effects.

IX. VIOLATION ALLEGED

41. The effect of the proposed acquisition, if completed, would likely be to substantially lessen competition in interstate trade and commerce in the relevant markets, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

42. Unless enjoined, the proposed acquisition likely would have the following effects in each of the relevant markets:

- (a) competition between Verso and NewPage would be eliminated;
- (b) competition would likely be substantially lessened;
- (c) prices would likely be higher than they otherwise would; and
- (d) output would likely be lower than it otherwise would.

X. REQUEST FOR RELIEF

43. The United States requests that the Court:

- (a) judge Verso's proposed acquisition of NewPage to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- (b) permanently enjoin Verso from acquiring any of the assets of NewPage or engaging in any other transaction that would combine the two companies;
- (c) award Plaintiff the costs of this action; and
- (d) award Plaintiff other just and proper relief.

December _31_, 2014.

Respectfully Submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VERSO PAPER CORP., and
NEWPAGE HOLDINGS INC.,

Defendants.

CASE NO. 1:14-cv-2216

JUDGE: Tanya S. Chutkan

FILED: 12/31/14

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (“United States”), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (“APPA” or “Tunney Act”), 15 U.S.C. § 16(b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I.

NATURE AND PURPOSE OF THE PROCEEDING

On January 3, 2014, Defendant Verso Paper Corp. (“Verso”) agreed to acquire all of the assets of Defendant NewPage Holdings Inc. (“NewPage”). The United States filed a civil antitrust Complaint on December 31, 2014, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially in the markets for coated publication papers and label paper in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. For each product, this loss of competition likely would result in higher prices, lower output, and fewer services for customers in North America.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (“Hold Separate”) and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, the Defendants must divest two NewPage mills that manufacture the relevant products. Under the terms of the Hold Separate Stipulation and Order, the Defendants will take certain steps to ensure that the assets being divested will be operated as a competitively independent, economically viable, and ongoing business concern, that will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II.

DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

On January 3, 2014, Verso agreed to acquire NewPage for approximately \$1.4 billion. In North America, Verso and NewPage are two of the largest producers of coated paper. Verso and NewPage produce a range of coated papers, including coated publication papers and label paper.

Verso, a corporation headquartered in Memphis, Tennessee, owns and operates two mills, both of which are located in North America.¹ The mills collectively produce a range of coated

¹ In December 2014, Verso closed its mill in Bucksport, Maine, which produced coated groundwood paper. In the press release announcing the closure, Verso’s CEO indicated that the mill has been unprofitable for a number of years and that in today’s marketplace the Bucksport

freesheet web paper, coated groundwood paper, and label paper that is sold to customers throughout North America. In 2013, Verso had approximately \$1.4 billion in sales.

NewPage, a corporation headquartered in Miamisburg, Ohio, owns and operates eight mills, all of which are located in North America. The mills collectively produce a range of coated freesheet web paper, coated groundwood paper, and label paper sold to customers throughout North America. Its annual sales for 2013 were approximately \$3.1 billion.

B. *The Competitive Effects of the Proposed Acquisition*

1. The Relevant Product Markets are Coated Freesheet Web Paper, Coated Groundwood Paper, and Label Paper

The Complaint alleges three types of coated paper are relevant product markets within the meaning of Section 7 of the Clayton Act: coated freesheet web paper, coated groundwood paper, and label paper. Coated freesheet paper and coated groundwood paper are both used for publications and are typically coated on two sides. Coated freesheet paper is made from pulp that has impurities removed before being made into paper, resulting in bright, high-quality paper. Coated freesheet paper is typically used for annual reports, magazine covers, premium magazines, brochures, and direct mail advertising.

Coated freesheet web paper is produced for use in web printing applications. Web printers feed paper rolls through the printing equipment rather than individual sheets of paper, as used in sheet-fed printing applications. Web printing typically involves different equipment and different paper than sheet-fed printing. In particular, coated freesheet paper for use in web printing has lower moisture content so that heat applied in the printing process does not cause the

mill would be unlikely to become profitable in the future. Press Release, Verso Paper Corp., Verso Announces Closure of Bucksport, Maine Paper Mill (Oct. 1, 2014) (available at <http://investor.versopaper.com/releasedetail.cfm?ReleaseID=874161>). Verso contemplated closing the mill before it decided to merge with NewPage. The United States does not allege that the closing of the Bucksport Mill is a result of the merger.

paper to blister. For this reason, coated freesheet paper produced for use in sheet-fed printers is functionally not a substitute for coated freesheet web paper.

For customers who choose coated freesheet paper for their printed material, web printing is often the more cost-effective choice for large print jobs than sheet-fed printing, which typically is more cost-effective for small print jobs. In response to a small but significant increase in the price of coated freesheet web paper, customers who use coated freesheet web paper for their print jobs are unlikely to substitute to sheet-fed printing or other alternatives in sufficient quantity to make the price increase unprofitable. As such, coated freesheet web paper is a relevant product.

Coated groundwood paper is also a relevant product. Coated groundwood paper is typically used for the interior pages of magazines and catalogues, the covers of low-cost magazines, and other similar-quality printing applications. In response to a small but significant increase in the price of coated groundwood paper, purchasers are unlikely to switch to coated freesheet paper in sufficient quantities to make the price increase unprofitable because coated freesheet paper is typically more expensive, heavier, or has other characteristics that are undesirable for coated groundwood applications. Purchasers are also unlikely to switch to lower quality paper in sufficient quantities to make the price increase unprofitable because lower quality paper produces a less appealing printed page than coated groundwood paper.

Label paper is a relevant product. Label paper is typically made from coated freesheet paper. Label paper is coated on only one side; the other side is treated with an adhesive for placement on an object or surface. Label paper is principally used for two types of applications: cut-and-stack labels such as those that appear on canned food, and the face paper for pressure-sensitive labels such as those that appear on wine bottles. Label paper purchasers require a

consistently high-quality label because the label is an important aspect of a product's brand recognition and therefore sales success. The cost of the label, moreover, is typically a small fraction of the cost of the product on which the label appears. Because high-quality labels are critical to a product's marketplace image and are a small part of the product's cost, label paper purchasers are unlikely to substitute from label papers to other forms of printed information on containers in response to a small but significant increase in the price of label paper.

2. The Relevant Geographic Market Is No Larger than Customers Located In North America.

For each relevant product, the Complaint alleges that the relevant geographic market is no larger than North America (defined consistent with industry terminology as the United States and Canada). The market is defined around the location of customers because suppliers typically negotiate prices on a delivered basis with individual customers. As a result, suppliers charge different prices to different customers based on the customers' location. A hypothetical monopolist of each of the three relevant products sold to customers located in North America would likely profit from a small but significant price increase. Customers located in North America would likely not avoid the price increase by engaging in arbitrage. Arbitrage would entail a customer trying to avoid the price increase by purchasing products from another customer outside the relevant market. Arbitrage is unlikely to occur in sufficient quantities to make the price increase unprofitable because the end customer would need to pay significant incremental shipping costs that would make arbitrage an uneconomical strategy. Arbitrage is also unlikely to occur because a customer purchasing through arbitrage loses valuable services that producers often provide, such as inventory management, just-in-time delivery, warranties, and technical support.

3. The Proposed Acquisition Will Likely Result In Anticompetitive Effects.

The Complaint alleges that the proposed acquisition will likely substantially lessen competition in all three relevant markets. In each market, the Complaint alleges that the acquisition will likely increase concentration substantially and eliminate significant head-to-head competition, leading to higher prices and reduced output. In the coated freesheet web and coated groundwood markets, the Complaint further alleges that the acquisition will likely cause the remaining competitors to accommodate one another's price increases and output reductions.

The proposed acquisition is presumptively unlawful because it will increase concentration significantly in the highly concentrated coated freesheet web and label paper markets. Market concentration is a useful indicator of the level of competitive vigor in a market and the likely competitive effects of a proposed acquisition. The more concentrated a market and the more an acquisition would increase market concentration, the more likely that the acquisition would substantially reduce competition. Courts typically measure concentration in relevant markets using the Herfindahl-Hirschman Index (HHI). Markets in which the post-acquisition HHI is between 1,500 and 2,500 are considered to be moderately concentrated and markets in which the HHI exceeds 2,500 are considered highly concentrated. Acquisitions that increase the HHI by more than 200 points and result in a highly concentrated market are presumed likely to create or enhance market power.

In the markets for coated freesheet web paper and label paper, the proposed acquisition would significantly increase concentration in highly concentrated markets. In the coated freesheet web market, NewPage had a 30% market share and Verso had a 20% market share at the end of 2013. The post-acquisition HHI would increase by approximately 1,200 to approximately 3,500. In the label paper market, NewPage had a 60% market share and Verso had a 10% market share at the end of 2013. The HHI would increase by approximately 1,500,

and the post-acquisition HHI would be approximately 5,300. In the coated groundwood market, NewPage and Verso each had a 20% market share at the end of 2013. The proposed acquisition would increase concentration by approximately 800 and result in a moderately concentrated market, with a post-acquisition HHI of approximately 2,200.

Demand for coated publication papers has declined over the last several years, and this decline is projected to continue for the foreseeable future. Continued declines in demand will likely cause inefficient competitors to exit the markets while only cost-effective competitors will survive. In the coated freesheet web market, the Defendants are two of three firms with cost-effective mills. In the coated groundwood and label markets, the Defendants are two of a small number of firms with cost-effective mills.

Products within each of the relevant product markets are differentiated. Customers have varying preferences for product quality, appearance, and performance. Verso, NewPage, and other producers design products and marketing strategies to cater to these varying preferences. For many customers of the relevant products, Verso and NewPage competed head-to-head for business and represented the two best alternatives. For these customers, the acquisition would reduce competition because they would lose one of their two best options and a less desirable option would become the customer's best alternative. The proposed acquisition eliminates this head-to-head competition.

In addition, the coated freesheet web and coated groundwood markets are conducive to accommodating conduct by competitors because a small number of producers dominate the industry, and producers regularly obtain information from customers about their options and competitors' prices and product availability. Remaining competitors would likely find it more

profitable to follow price increases rather than lower prices and risk a competitive response from other firms.

4. Supply Responses and Creditable, Procompetitive Efficiencies Would Not Likely Prevent Anticompetitive Effects.

The Complaint alleges that supply responses from new competitors or expansion by existing competitors are unlikely to be timely or sufficient in scope to prevent the reduction in competition likely to result from the proposed acquisition. Entry or expansion into each of the relevant markets is costly and time-consuming. A competitive entrant would need a cost-effective mill. Building such a mill would cost billions of dollars, take two or more years to build, and require extensive environmental permits to construct. New competitors also would need to secure major customers, which often involves lengthy and expensive qualification processes.

Non-North American producers are unlikely to increase imports into North America to prevent the likely anticompetitive effects. Overseas producers tend to focus on markets that are closer to them where they can earn higher margins, rather than selling in the more distant North American markets where they pay higher shipping costs. In addition, customers require timely delivery, as coated paper is an essential input into their final products. Procuring coated paper from overseas adds significant lead time, increases the risk of delivery delays, and makes more difficult quick correction of quality problems. Also, fluctuations in foreign exchange rates pose a challenge to overseas producers competitively selling to customers in North America because they add substantial risk to long-term relationships.

Finally, the Complaint alleges that Defendants cannot demonstrate cognizable, merger-specific efficiencies that Verso would pass through to consumers in the form of lower prices, higher quality, or better service to counteract the likely anticompetitive effects.

III.

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in the North American market for coated publication papers and label paper by establishing a new, independent, and economically-viable competitor. The proposed Final Judgment requires the Defendants, within ten (10) days after the Court enters the Hold Separate Stipulation and Order in this matter to divest, as a viable ongoing business, NewPage's Rumford, Maine, and Biron, Wisconsin, mills, and all associated mill assets (the "Divestiture Mills"). The Divestiture Mills must be divested in such a way as to satisfy the United States in its sole discretion that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the coated freesheet web, coated groundwood, and label paper markets. The Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

The Defendants must sell the Divestiture Mills to Catalyst Paper Corporation ("Catalyst"). Catalyst is a forest-products company headquartered in British Columbia, Canada. Catalyst operates three paper mills, all located in British Columbia. Catalyst makes a variety of paper grades across its mill system. At its Port Alberni mill, Catalyst produces coated groundwood paper and small quantities of coated freesheet web paper. Catalyst does not produce label paper. If, for some reason, Defendants are unable to complete the sale to Catalyst, they must sell the Divestiture Mills to an alternative purchaser who must be approved by the United States.

The proposed Final Judgment provides that the United States may appoint a Monitoring Trustee with the power and authority to investigate and report on the Defendants' compliance

with the terms of the Final Judgment and the Hold Separate Stipulation and Order. The Monitoring Trustee would not have any responsibility or obligation for the operation of the Defendants' businesses. The Monitoring Trustee would serve at the Defendants' expense, on such terms and conditions as the United States approves, and the Defendants would be required to assist the trustee in fulfilling its obligations. The Monitoring Trustee would serve for two years. The United States may, in its sole discretion, extend the Monitoring Trustee's term for an additional year. The Monitoring Trustee would file monthly reports for the first year and annual reports for each year thereafter, or more frequently as needed.

In the event that Defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that the Defendants will pay all costs and expenses of the trustee. The trustee's commission would be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee would file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the United States would make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment preserve the competition that would be lost if the proposed acquisition occurred without the divestiture. The divestiture will largely maintain the existing structure of the relevant markets. The mills to be divested produced

approximately 940,000 tons of coated publication papers, label paper, and other papers, which is approximately the same amount of production as Verso currently operates. In addition, the divestiture will provide the purchaser of the divested assets with a market presence comparable to Verso's current market presence in the relevant markets. The purchaser will also obtain production assets that have a track record of competitively producing a range of coated publication papers and label paper.

The proposed Final Judgment provides that the purchaser of the Biron mill will have the option to procure softwood kraft pulp from Verso's Wisconsin Rapids mill through a pulp supply contract. Price will be set using a methodology consistent with the methodology that Defendants historically have used in setting transfer prices for bleached softwood kraft pulp provided to the Biron mill, with appropriate overhead costs removed. The Biron mill has a semi-integrated pulp supply. The mill produces its own mechanical pulp and receives softwood kraft pulp from NewPage's Wisconsin Rapids mill, which is approximately four miles away, through a pipeline and by truck. The supply contract under the proposed Final Judgment will enable the Biron mill to sell coated groundwood products at competitive prices.

The proposed Final Judgment also provides that the purchaser of the Biron mill will have the option to procure waste and wastewater disposal services from Verso. Price will be set using a methodology consistent with the methodology that Defendants historically have used in setting transfer prices for waste and wastewater disposal services provided to the Biron mill, with appropriate overhead costs removed. The Biron mill currently shares waste and wastewater disposal service with other mills owned by NewPage. The waste and wastewater services contract under the proposed Final Judgment will enable the Biron mill to sell coated groundwood products at competitive prices.

IV.

REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V.

PROCEDURES AVAILABLE FOR MODIFICATION
OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment.

The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Peter J. Mucchetti
Chief, Litigation I Section
Antitrust Division
United States Department of Justice
450 5th Street, NW, Suite 4100
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI.

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Verso's acquisition of NewPage. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the provision of coated freesheet web paper, coated groundwood paper, and label paper in the relevant market identified by the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII.

STANDARD OF REVIEW UNDER THE APPA
FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the Complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B).² In considering these statutory factors, the court’s inquiry is necessarily a limited one as the government is entitled to “broad discretion to settle with the defendant within the reaches of the public interest.” *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. SBC Commc’ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States v.*

² The 2004 amendments substituted “shall” for “may” in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc’ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments “effected minimal changes” to Tunney Act review).

U.S. Airways Group, Inc., No. 13-cv-1236 (CKK), 2014-1 Trade Cas. (CCH) ¶ 78, 748, 2014 U.S. Dist. LEXIS 57801, at *7 (D.D.C. Apr. 25, 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009-2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court’s review of a consent judgment is limited and only inquires “into whether the government’s determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.”).

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government’s complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. With respect to the adequacy of the relief secured by the decree, a court may not “engage in an unrestricted evaluation of what relief would best serve the public.” *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court’s role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is “*within the reaches of the public interest*.” More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).³ In determining whether a proposed settlement is in the public interest, a district court “must accord deference to the government’s predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.” *SBC Commc’ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *16 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be “deferential to the government’s predictions as to the effect of the proposed remedies”); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States’ prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. “[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ‘within the reaches of public interest.’” *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff’d sub nom. Maryland v. United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *8 (noting that room must be made for the government to grant concessions in the negotiation

³ *Cf. BNS*, 858 F.2d at 464 (holding that the court’s “ultimate authority under the [APPA] is limited to approving or disapproving the consent decree”); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to “look at the overall picture not hypercritically, nor with a microscope, but with an artist’s reducing glass”). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether “the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the ‘reaches of the public interest’”).

process for settlements (citing *Microsoft*, 56 F.3d at 1461)); *United States v. Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States “need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.” *SBC Commc’ns*, 489 F. Supp. 2d at 17.

Moreover, the court’s role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to “construct [its] own hypothetical case and then evaluate the decree against that case.” *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (noting that the court must simply determine whether there is a factual foundation for the government’s decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 (“the ‘public interest’ is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged”). Because the “court’s authority to review the decree depends entirely on the government’s exercising its prosecutorial discretion by bringing a case in the first place,” it follows that “the court is only authorized to review the decree itself,” and not to “effectively redraft the complaint” to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459-60. As this Court confirmed in *SBC Communications*, courts “cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.” *SBC Commc’ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that

“[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.” 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: “[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.” 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court’s “scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.” *SBC Commc’ns*, 489 F. Supp. 2d at 11.⁴ A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 2014 U.S. Dist. LEXIS 57801, at *9.

VIII.

DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

⁴ *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the “Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone”); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) (“Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.”); S. Rep. No. 93-298, at 6 (1973) (“Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.”).

Dated: December 31, 2014

Respectfully submitted,

/s/ Karl Knutsen

Karl D. Knutsen

U.S. Department of Justice

Antitrust Division

Litigation I Section

450 Fifth Street, NW, Suite 4100

Washington, DC 20530

Phone: (202) 514-0976

Facsimile: (202) 305-1190

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VERSO PAPER CORP., and
NEWPAGE HOLDINGS INC.,

Defendants.

CASE NO. 1:14-cv-2216
JUDGE: Tanya S. Chutkan
FILED: 12/31/14

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on December 31, 2014, the United States and defendants, Verso Paper Corp. and NewPage Holdings Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures

required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

II. Definitions

As used in this Final Judgment:

- A. “Acquirer(s)” means Catalyst or another entity or entities to whom Defendants divest the Divestiture Mills.
- B. “Catalyst” means Catalyst Paper Corporation, a Canadian corporation with its headquarters in Richmond, British Columbia, Canada, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.
- C. “Defendants” means NewPage and Verso.
- D. “Divestiture Mills” means NewPage’s pulp and paper mill located at 35 Hartford Street, Rumford, Maine 04276 (the “Rumford Mill”); and NewPage’s pulp and paper mill located at 621 North Biron Drive, Wisconsin Rapids, Wisconsin 54495 (the “Biron Mill”) (subject to the exclusions in Section II(D)(3) below), including:

1. All tangible assets necessary to operate, used in or for, or devoted to the Divestiture Mills including, but not limited to, all manufacturing equipment, tooling and fixed assets, real property (leased or owned), personal property, inventory, reserves, office furniture, information technology systems, materials, supplies, and other tangible property and all assets used exclusively in connection with the Divestiture Mills; all licenses, permits and authorizations issued by any governmental organization relating to the Divestiture Mills; all contracts, teaming arrangements, agreements, leases (including renewal rights), commitments, certifications, and understandings relating to the Divestiture Mills, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Divestiture Mills.

2. All intangible assets necessary to operate, used in or for, or devoted to the Divestiture Mills, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names, technical information, computer software and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, environmental studies and assessments, design tools and simulation capability, all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents or licensees, and all research data concerning historic and current research and development efforts relating to the Divestiture Mills, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

3. “Divestiture Mills” does not include the Wisconsin Rapids pulp mill, the Consolidated Water Power Company, the Sterling trade name and trademark, and the NewPage

Research and Development facility at 300 N. Biron Drive, Wisconsin Rapids, Wisconsin, 54494.

E. “NewPage” means Defendant NewPage Holdings Inc., a Delaware corporation with its headquarters in Miamisburg, Ohio, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. “Verso” means Defendant Verso Paper Corp., a Delaware corporation with its headquarters in Memphis, Tennessee, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Verso and NewPage, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Mills, they shall require the Acquirer(s) to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within ten (10) calendar days after the signing of the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Mills in a manner consistent with this Final Judgment to an Acquirer(s) acceptable to the United

States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Mills as expeditiously as possible.

B. Defendants must first attempt to sell the Divestiture Mills to Catalyst. In the event that the sale to Catalyst fails, and Defendants attempt to sell the Divestiture Mills to an Acquirer(s) other than Catalyst, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Mills for sale. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Mills that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

C. In accomplishing the divestiture ordered by this Final Judgment, Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Mills customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrines. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall permit all prospective Acquirers to have reasonable access to personnel and to make inspections of the physical facilities of the Divestiture Mills; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrines.

E. Defendants shall provide the Acquirer(s) of the Divestiture Mills and the United States information relating to the personnel involved in the management, production or sales activities of the Divestiture Mills to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ any Defendant employee whose primary responsibility is the management, production, distribution or sales activities of the Divestiture Mills. Defendants shall waive all non-compete agreements for any current or former employee whom the Acquirer(s) employs with relation to the Divestiture Mills.

F. Defendants shall warrant to the Acquirer(s) that each of the Divestiture Mills will be operational on the date of sale.

G. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Mills.

H. At the option of the Acquirer and on terms and conditions acceptable to the United States in its sole discretion, Defendants shall enter into a Supply Agreement for the sale of bleached softwood kraft pulp and a Service Agreement for the provision of waste and wastewater disposal services to the acquirer of the Biron Mill sufficient to meet all or part of the Acquirer's needs. Price under the Supply Agreement shall be set using a methodology consistent with the methodology that Defendants historically have used in setting transfer prices for bleached softwood kraft pulp and waste and wastewater disposal services provided to the Biron Mill (in each case, with appropriate overhead costs removed). Defendants shall designate employees, other than Defendants' senior managers or employees engaged in sales and marketing, to implement any such Supply Agreement and shall prevent disclosure of any confidential, proprietary, or business-sensitive information of the Acquirer(s) to any other employees of Defendants except as necessary to implement the Supply Agreement.

I. At the option of the Acquirer(s) and on terms and conditions acceptable to the United States in its sole discretion, Defendants shall enter into a Transition Services Agreement based upon commercially reasonable terms and conditions. Such an agreement may not exceed twelve (12) months from the date of divestiture except as approved by the United States in its sole discretion. Transition services may include information technology support, information technology licensing, computer operations, data processing, logistics support, wood purchasing, and such other services as reasonably necessary to operate the Divestiture Mills. Any amendments to or modifications of the Transition Services Agreement may only be entered into with the approval of the United States in its sole discretion.

J. Defendants shall warrant to the Acquirer(s) that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Mills, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Mills.

K. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entirety of the Divestiture Mills, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Mills can and will be used by the Acquirer(s) as part of a viable, ongoing business of the production, distribution and sale of coated freesheet web paper, coated groundwood paper, and cut-and-stack label paper and face sheet for pressure sensitive labels in North America. Divestiture of the Divestiture Mills may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Mills will remain viable and the divestiture

of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

- (1) shall be made to an Acquirer(s) that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of the production, distribution and sale of coated freesheet web paper, coated groundwood paper, and cut-and-stack label paper and face sheet for pressure sensitive labels; and
- (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants gives Defendants the ability unreasonably to raise the costs of the Acquirer(s), to lower the efficiency of the Acquirer(s) or otherwise to interfere in the ability of the Acquirer(s) to compete effectively.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Mills within the time period specified in Section IV(A) of this Final Judgment, Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Mills.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Mills. The Divestiture Trustee shall

have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D), the Divestiture Trustee may hire, at the expense of Defendants, any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI of this Final Judgment.

D. The Divestiture Trustee shall serve at the expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the

Divestiture Mills and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and Defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court, setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number

of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Mills, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Mills.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such report contains information that the Divestiture Trustee deems confidential, such report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. If the divestitures required herein are not made to Catalyst under the terms of a definitive divestiture agreement previously submitted to the United States, then within two (2)

business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Mills, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer(s). Defendants and the Divestiture Trustee shall furnish any additional information requested, except such information or documents subject to the attorney-client privilege or work-product doctrine, within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the

proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V of this Final Judgment shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court. Notwithstanding the foregoing provisions of this Section VI, the United States, in its sole discretion, may withhold its approval of the proposed divestiture of a single Divestiture Mill until such time as the United States concludes that it can approve an Acquirer(s) for both Divestiture Mills consistent with the terms of the Final Judgment.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V of this Final Judgment, Defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30)

calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Mills, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Mills, and to provide required information to all prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Mills until one year after such divestiture has been completed.

X. Appointment of Monitoring Trustee

A. Upon application of the United States, the Court shall appoint a Monitoring Trustee selected by the United States and approved by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate Stipulation

and Order entered by this Court, and shall have such other powers as this Court deems appropriate. The Monitoring Trustee shall be required to investigate and report on the Defendants' compliance with this Final Judgment and the Hold Separate Stipulation and Order and the Defendants' progress toward effectuating the purposes of this Final Judgment, including, but not limited to, any breach or other problem that arises under any Supply Agreement or Transition Services Agreement that may adversely affect the accomplishment of the purposes of this Final Judgment, the reasons for such breach or problem, and recommended remedies.

C. Subject to Section X(E) of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Defendants any consultants, accountants, attorneys, or other agents, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment. Any such consultants, accountants, attorneys, or other agents shall serve on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications.

D. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to Defendants' objection.

E. The Monitoring Trustee shall serve at the cost and expense of Defendants pursuant to a written agreement with Defendants and on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and

other agents retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities. If the Monitoring Trustee and Defendants are unable to reach agreement on the Monitoring Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Monitoring Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Monitoring Trustee shall, within three (3) business days of hiring any consultants, accountants, attorneys, or other agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

F. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

G. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other agents retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to compliance with this Final Judgment, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or impede the Monitoring Trustee's accomplishment of its responsibilities.

H. After its appointment, the Monitoring Trustee shall file reports monthly for the first year and at the end of each year thereafter, or more frequently as needed, with the United States, and, as appropriate, the Court, setting forth Defendants' efforts to comply with their

obligations under this Final Judgment and under the Hold Separate Stipulation and Order. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

I. The Monitoring Trustee shall serve for two years. The Monitoring Trustee's term may be extended for one (1) additional year, in the sole discretion of the United States.

J. If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend that the Court appoint a substitute Monitoring Trustee.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

- (1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copies or electronic copies of all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present,

regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(g) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Mills during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust
Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge